

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND**

ALBERT L. GRAY, Administrator of the
Estate of Derek J. Gray, and on behalf of
JANI L. GRAY-MCGILL, minor child of the
Decedent, Derek J. Gray, et al.
Plaintiffs,

VS.

JEFFREY DERDERIAN, et al.
Defendants.

C.A. NO.: 04-312-L

**PLAINTIFFS' OBJECTION TO DEFENDANTS' JEFFREY
DERDERIAN, MICHAEL DERDERIAN, AND DERCO, LLC d/b/a THE
STATION'S MOTION TO STAY THE INSTANT ACTION AGAINST
THEM**

Now comes the Plaintiffs in the above-entitled action and hereby object to the motion of defendants, Jeffrey Derderian, Michael Dederian and DERCO, LLC, d/b/a The Station, to stay the instant action against them, including the filing of an answer to the plaintiffs' complaint, through, and until, January 31, 2005. The grounds for the plaintiffs' objection are set forth within the accompanying memorandum of law.

Plaintiffs pray that the Defendants' Motion To Stay be denied and that said defendants be ordered to file their answer to plaintiffs' complaint within ten (10) days.

Respectfully submitted
By Their Attorneys,

Plaintiffs #13(d) and (e); #17 through #63, inclusive; #133 through #190, inclusive; #225; and #226;

Mark S. Mandell / SAM
#4155

Mark S. Mandell, Esquire (#0502)
Mandell, Schwartz & Boisclair
One Park Row
Providence, RI. 02903
(401) 273-8330

Max Wistow / SAM
#4155

Max Wistow, Esquire (#0330)
Wistow & Baryllick Incorporated
61 Weybosset Street
Providence, RI. 02903
(401) 831-2700

Plaintiffs 1 through #12, inclusive; #13(a), (b), and (c); #14 through #16, inclusive; #80 through #132, inclusive; #222; and #223;

Patrick T. Jones / SAM
#4155

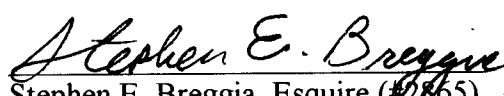
Patrick T. Jones, Esquire (#6636)
Cooley Manion Jones LLP
21 Custom House Street
Boston, MA. 02110
(617) 737-3100

Plaintiffs #65(b); #71 through #75, inclusive; #196 through #215, inclusive' and #224;

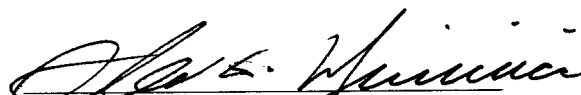
Michael A. St. Pierre / SAM
#4155

Michael A. St. Pierre, Esquire (#2553)
Revens, Revens & St. Pierre
946 Centerville Road
Warwick, RI. 02886
(401) 822-2900

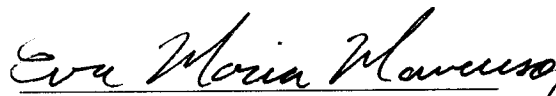
Plaintiffs #64; #65(a); #66 through #68, inclusive; and #192 through #195, inclusive;

 / SAM
#4155
Stephen E. Breggia, Esquire (#2865)
Breggia, Bowen & Grande
395 Smith Street
Providence, RI. 02908
(401) 831-1900

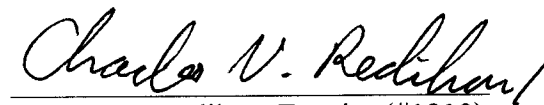
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Steven A. Minicucci, Esquire (#4155)
Calvino Law Associates
373 Elmwood Avenue
Providence, RI. 02903
(401) 785-9400

Plaintiffs #69; #70, and #199;

 / SAM
#4155
Eva Marie Mancuso, Esquire (#3564)
Hamel, Waxler, Allen & Collins
387 Atwells Avenue
Providence, RI. 02909
(401) 455-3800

Plaintiff #191;

 / SAM
#4155
Charles N. Redihan, Esquire (#1810)
Kiernan, Plunkett & Redihan
91 Friendship Street,
Providence, RI. 02903
(401) 831-2900

CERTIFICATION

I hereby certify that an exact copy of the within document was mailed to the following individuals on this 8th day of October, 2004.

Thomas C. Angelone, Esquire
Hodosh, Spinella & Angelone, P.C.
One Turks Head Place, Suite 1050
Providence, RI 02903

C. Russell Bengtson, Esquire
Carroll, Kelly & Murphy
One Turks Head Place, Suite 400
Providence, RI 02903

Stephen E. Breggia, Esquire
Breggia, Bowen & Grande
395 Smith Street
Providence, RI 02908

Joseph B. Burns, Esquire
Rome McGuigan Sabanosh, P.C.
One State Street
Hartford, CT 06103

Joseph V. Cavanagh, Jr., Esquire
Kristine E. Rodgers, Esquire
Blish & Cavanagh, LLP
30 Exchange Terrance
Providence, RI 02903

Edward M. Crane, Esquire
Deborah Solmor, Esquire
Law Offices of Brian Cunha & Associates
904 Broadway
East Providence, RI 02914

Brian Cunha, Esquire
Brian Cunha & Associates
904 Broadway
East Providence, RI 02903

Michael R. DeLuca, Esquire
Gidley, Sarli & Marusak, LLP
One Turks Head Place, Suite 900
Providence, RI 02903

Anthony F. DeMarco, Esquire
Christopher C. Fallon, Esquire
Reynolds, DeMarco & Boland, LTD
170 Westminster Street, Suite 200
Providence, RI 02903

Gerald C. DeMaria, Esquire
James A. Ruggieri, Esquire
Higgins, Cavanagh & Cooney
The Hay Building
123 Dyer Street
Providence, RI 02903

Marc DeSisto, Esquire
DeSisto Law
211 Angell Street
PO Box 2563
Providence, RI 02906-2563

Curtis R. Diedrich, Esquire
Sloane & Walsh, LLP
127 Dorrance Street
Providence, RI 02903

Stephanie DiMaio-Larivee, Esquire
Grilli & DiMaio
215 Broadway
Providence, RI 02903

Mark Dolan, Esq.
Rice, Dolan & Kershaw
170 Westminster Street
Providence, RI. 02903

Gerald P. Dwyer, Jr., Esq.
Robinson & Cole
280 Trumbull-Street
Hartford, CT. 06103

Christopher C. Fallon, Jr., Esquire
Cozen O'Connor
1900 Market Street
Philadelphia, PA 19103-3508

Donald M. Gregory, Esquire
7630 Post Road
North Kingstown, RI 02852

Mark Hadden, Esquire
68 Kennedy Plaza, Suite 3
Providence, RI 02903

Carl A. Henlein, Esquire
John R. Crockett, III, Esquire
Susan S. Wettle, Esquire
Frost Brown Todd
400 West Market Street, 32nd Floor
Louisville, KY 40202-3363

Edward T. Hinchey, Esquire
Sloane & Walsh, LLP
Three Center Plaza
Boston, MA 02108

Howard Julian
570 Shermantown Road
Saunderstown, RI. 02874

Daniel J. Horgan, Esquire
The Horgan Law Offices
111 Huntington Street
New London, CT 06320

Patrick T. Jones, Esquire
Cooley Manion Jones, LLP
21 Custom House Street
Boston, MA 02110

Bruce P. Keller, Esquire
Jessica L. Margolis, Esquire
Debevoise & Plimpton
919 Third Avenue
New York, NY 10022

Fred A. Kelly, Jr., Esquire
Randall L. Souza, Esq.
Jessica L. Margolis, Esquire
Nixon Peabody, LLP
One Citizens Plaza, Suite 700
Providence, RI 02903

Joseph Krowski, Esquire
30 Cottage Street
Brockton, MA 02310

Donna M. Lamontagne, Esquire
Zizik, Powers, O'Connell, Spaulding, Lamontagne, P.C.
40 Westminster Street, Suite 201
Providence, RI 02903

Ronald Langlois, Esquire
Lauren Wilkins, Esquire
Smith & Brink, P.C.
One State Street, Suite 400
Providence, RI 02908

Faith A. LaSalle, Esquire
Law Offices of Faith A. LaSalle
One Turks Head Place, Suite 1010
Providence, RI 02903

James R. Lee, Esquire
Department of Attorney General
150 South Main Street
Providence, RI 02903

Thomas W. Lyons, Esquire
Strauss, Factor, Laing & Lyons
222 Richmond Street, Suite 208
Providence, RI 02903-2914

Richard W. MacAdams, Esquire
MacAdams & Wieck Incorporated
10 Dyer Street, Suite 400
Providence, RI 02903

John R. Mahoney, Esquire
Asquith & Mahoney LLP
155 South Main Street
Providence, RI 02903

Eva Marie Mancuso, Esquire
Hamel, Waxler, Allen & Collins
387 Atwells Avenue

Providence, RI 02909

Mark Mandell, Esquire
Yvette M. Boisclair, Esquire
Mandell, Schwartz & Boisclair
One Park Row
Providence, RI 02903

W. Thomas McGough, Jr., Esquire
James J. Restivo, Jr., Esquire
Reed Smith LLP
435 Sixth Avenue
Pittsburgh, PA 15219

Edwin F. McPherson, Esquire
McPherson & Kalmansohn LLP
1801 Century Park East, 24th Floor
Los Angeles, CA 90067

Matthew F. Medeiros, Esquire
Little Medeiros Kinder Bulman & Whitney P.C.
72 Pine Street
Providence, RI 02903

Howard A. Merten, Esquire
Eric M. Sommers, Esquire
Vetter & White
20 Washington Place
Providence, RI 02903

Ralph J. Monaco, Esquire
Conway & Londregan, P.C.
38 Huntington Street
PO Box 1351
New London, CT 06320

James T. Murphy, Esquire
Kelly N. Michels, Esquire
Hanson Curran, LLP
146 Westminster Street
Providence, RI 02903

John J. Nazzaro, Esquire
John Nazzaro Law Office
164 Hempstead Street
New London, CT 06320

Mark T. Nugent, Esquire
Morrison Mahoney LLP

121 South Main Street, Suite 600
Providence, RI 02903

Edward B. O'Connell, Jr., Esq.
Waller, Smith & Palmer, P.C.
51 Eugene O'Neil Drive
P.O. Box 88
New London, CT. 06320

J. Renn Olenn, Esquire
Olenn & Penza, LLP
530 Greenwich Avenue
Warwick, RI 02886

Mark K. Ostrowski, Esquire
Shipman & Goodwin, LLP
One Constitution Plaza
Hartford, CT 06103-1919

Carla Ottaviano, Esq.
Law Offices of DuBorg & Farrell
200 Glastonbury Blvd., Ste. 301
Glastonbury, CT. 06033

Robert I. Reardon, Esquire
The Reardon Law Firm
160 Hempstead Street
New London, CT 06320

Charles N. Redihan, Jr., Esquire
Kiernan, Plunkett & Redihan
91 Friendship Street
Providence, RI 02903

James H. Reilly, Esquire
Donald J. Maroney, Esquire
Kelly, Kelleher, Reilly & Simpson
146 Westminster Street, Suite 500
Providence, RI 02903

Ronald J. Resmini, Esquire
Law Offices of Ronald J. Resmini
155 South Main Street, Suite 400
Providence, RI 02903

William P. Robinson, Esquire
Stephen M. Prignano, Esquire
Stephen J. MacGillivray, Esquire
Edwards & Angell, LLP
One Financial Plaza, Suite 2700

Providence, RI 02903

Michael T. Ryan, Esq.
Ryan, Ryan, Johnson & Deluca
80 Fourth Street
P.O. Box 3057
Stamford, CT. 06905

Michael A. St. Pierre, Esquire
Revens, Revens & St. Pierre, P.C.
946 Centerville Road
Warwick, RI 02886

Allan B. Taylor, Esq.
Day, Berry & Howard
185 Asylum Street
City Place I
Hartford, CT. 06103

Mark D. Tourgee, Esquire
Timothy A. Williamson, Esquire
Inman & Tourgee
1193 Tiogue Avenue
Coventry, RI 02916

Andrew J. Travelise, Esquire
Reed Smith LLP
2500 One Liberty Place
Philadelphia, PA 19103-7301

Scott J. Tucker, Esquire
Tucker, Heifetz & Saltzman, LLP
Three School Street
Boston, MA 02108

Earl H. Walker, Esquire
Charles Babcock, Esquire
Nancy W. Hamilton, Esquire
Jackson Walker LLP
1401 McKinney, Suite 1900
Houston, TX 77010

Max Wistow, Esquire
Wistow & Barylick
61 Weybosset Street
Providence, RI 02903

David B. Zabel, Esq.

Cohen & Wolf, P.C.
1115 Broad Street
P.O. Box 1821
Bridgeport, CT. 06103

John S. Minicucci

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**PLAINTIFFS' MEMORANDUM OF LAW IN SUPPORT OF
THEIR OBJECTION TO DEFENDANTS' JEFFREY DERDERIAN,
MICHAEL DERDERIAN, AND DERCO, LLC d/b/a THE STATION'S
MOTION TO STAY CIVIL PROCEEDINGS AGAINST THEM**

I. INTRODUCTION

On the evening of the tragic West Warwick fire, in addition to defendant Jeffrey Derderian acting as the onsite owner/operator of The Station nightclub in unison with his brother and co-defendant, Michael Derderian, individually and through their company DERCO, LLC, Jeffrey Derderian was also acting within the scope of his employment as an investigative television reporter for local station WPRI Channel 12.¹ While the plaintiffs will concede that defendants Jeffrey Derderian and Michael Derderian along with co-defendant Daniel Biechele are presently under criminal indictment in the Rhode Island Superior Court on 200 counts each of involuntary manslaughter and negligent homicide stemming from the events surrounding the nightclub fire on February 20, 2003, the plaintiffs point out that neither the defendants' limited liability company DERCO,

¹ Complaint, ¶¶ 273-297.

LLC, nor the co-defendant employer of Jeffrey Derderian, LIN Television Corporation/WPRI Channel 12, are facing any criminal charges at all. Given the complex nature and broad scope of this matter the defendants motion for a stay of civil proceedings against them should be denied as the defendants retain the right to invoke their Constitutionally protected Fifth and Fourteenth Amendment rights against self-incrimination, where doing otherwise would severely impede the progress of the discovery against several of the other civil defendants, and where the plaintiffs would surely be prejudiced by the delay in the civil litigation.

II. THE DEFENDANTS HAVE NO ABSOLUTE CONSTITUTIONAL RIGHT TO A STAY OF CIVIL PROCEEDINGS.

The mere fact that Jeffrey Derderian and Michael Derderian are under criminal indictment in Rhode Island State Court does not give rise to an entitlement under the Constitution that this Court stays all civil proceedings against them pending resolution of the parallel criminal proceedings. Securities & Exchange Comm'n v. Dresser Indus., 628 F.2d 1368, 1375 (D.C.Cir.) *cert. denied*, 449 U.S. 993, 101 S.Ct. 529, 66 L.Ed.2d 289 (1980). As authoritative support for their motion for a stay, the defendants cite the case of Federal Savings and Loan Insurance Corporation v. Molinaro, 889 F.2d 899, 902 (9th Cir. 1989) which, stated simply, held that the decision of whether to grant a stay is discretionary and will only be disturbed where the Court is found to have abused that discretion. Indeed, John L. Molinaro in that case conceded that he had no absolute constitutional right to a stay of the civil case against him pending the outcome of parallel criminal proceedings, and the 9th Circuit Court Of Appeals left undisturbed the District Court's decision in refusing to grant Molinaro a stay. Id.

It is also worth noting that while defendant Daniel Biechele is a co-defendant of Jeffrey and Michael Derderian in the above-entitled civil case as well as in the parallel criminal proceedings stemming from the events of February 20, 2003, rather than motioning for a complete stay of civil proceedings in this Court as have the moving co-defendants herein, defendant Daniel Biechele instead filed a timely answer to plaintiffs' complaint while fully availing himself of his Fifth Amendment Right against self incrimination in the body and form of his answer filed through his civil counsel Donald Maroney ² (*see*: Answer Of Defendant Daniel Biechele To Plaintiffs' Master Complaint). Therefore, where one of the parties to the parallel criminal proceeding has now already proceeded to answer plaintiffs' complaint, there is arguably precedent within this matter for proceeding with the civil litigation and allowing the defendants to seek refuge from discovery in their Fifth Amendment rights as appropriate.

III. THE CIRCUMSTANCES AND COMPETING INTERESTS INVOLVED IN THIS MATTER WEIGH AGAINST GRANTING DEFENDANTS' REQUESTED STAY OF CIVIL PROCEEDINGS.

In deciding whether to stay a civil case in the face of parallel criminal proceedings, a court must make its determination in light of the particular circumstances and competing interests involved in the case. Dresser Indus., 628 F.2d at 1375. In 1991, Justice Joseph Weisberger of the Rhode Island Supreme Court, wrote: "Although we recognize that the Fifth Amendment privilege against self-incrimination does extend to civil proceedings, we note that there are limitations on the right to invoke the privilege."

Tona v. Evans, 590 A2d 873, 876 (RI. 1991). Justice Weisberger also wrote: "...total

² The Answer of Defendant Daniel Biechele To Plaintiffs' Master Complaint goes on for several pages with Defendant Daniel Biechele reciting in each paragraph of each Count his election to follow the advice of counsel by invoking his Constitutional right against self-incrimination.

postponement of discovery is undoubtedly more relief than that to which a civil litigant is entitled.” Id. at 876.

The defendants reference the Alabama case of Ex parte Bernard J. Ebbers, 871 So2d 776 (Ala. 2003), which stems from the recent World Com litigation, for a detailed summary of factors identified by federal case law which should be considered when balancing whether to grant a stay such as the moving defendants have requested.³ Nevertheless, because the factors recognized by various cases have a potential for duplication and where not all of the factors are applicable in all given cases, citing the case of Sterling Nat’l Bank v. A-1 Hotel Int’l, Inc., 175 F.Supp.2d 573, 576 (S.D.N.Y. 2001), the Ebbers Court concluded that a trial court “must make a highly fact-bound inquiry into the ‘particular circumstances and competing interest involved in the case’”. Ebbers 871 So.2d at 790 *quoting Sterling*, 175 F.Supp.2d at 576.

The defendants argue that the granting of a stay will not interfere with the court’s consideration of legal issues raised by other co-defendants in various motions to dismiss.⁴ The plaintiffs take issue with such a statement as it has become plainly obvious from the many other defendants’ motions to dismiss that due to the central nature which the moving co-defendants played in the events preceding and on the evening of February 20, 2003, obtaining documentary discovery and testimony from them on non-privileged matters is absolutely imperative to gaining a more complete understanding on a diversity

³ See Memorandum Of Law In Support Of Motion To Stay filed by co-defendants Jeffrey Derderian, Michael Derderian and Derco, LLC d/b/a The Station, p.2.

⁴ See Memorandum Of Law In Support Of Motion To Stay filed by co-defendants Jeffrey Derderian, Michael Derderian and Derco, LLC d/b/a The Station, p.2.

of important issues ranging from WPRI Channel 12's role on the night of the fire to the nature of commercial advertising and involvement which WHJY-FM had.⁵

The indictments against defendants Jeffrey Derderian and Michael Derderian surround their activities as the owners and operator of the Station Nightclub regarding such issues as building overcrowding, indoor pyrotechnic use, and fire and building code compliance. While the Derderians might seek to invoke their right against self-incrimination in refusing to respond to civil discovery aimed at those issues, plaintiffs may conceivably proffer discovery on other non-privileged matters, that can be answered and which proves to be useful to plaintiffs in opposing one or more of the various motions to dismiss.

The granting of a broad stay such the moving co-defendants seek would severely restrict the plaintiffs' ability to inquire into a variety of areas and tangents of this case thus preventing the civil litigation from proceeding expeditiously against many of the other defendants. The court should attempt to strike a proper balance, not simply accord one of the litigants complete immunity from interrogation or production of documents. Tona, 590 A.2d at 876 *citing* Mahne v. Mahne, 66 N.J. 53, 328 A.2d 225 (1974). The circumstances of the instant matter support the contention that defendants' motion for a broad stay should be denied.

IV. DEFENDANT DERCO, LLC D/B/A THE STATION IS WITHOUT STANDING TO MOVE FOR A STAY.

One of the moving defendants as listed in the caption and body of the co-defendants' motion for a stay is designated to be Derco, LLC d/b/a The Station.⁶ Derco,

⁵ See e.g. WPRI's Partial Motion To Dismiss and Clear Channel's Motion To Dismiss both of which are currently pending before this Honorable Court.

LLC d/b/a/ The Station by using the designation “LLC” is holding itself out to be a duly existing Limited Liability Company as such entities are defined under Rhode Island Law. *See* R.I.G.L. §7-16-9 and *see also* R.I.G.L. §7-16-2(13). Furthermore, Derco, LLC does not stand as an indicted defendant in the Rhode Island Superior Court with Jeffrey Derderian, Michael Derderian and Daniel Bechele.

As a duly existing Rhode Island limited liability company, Derco, LLC possess no right to assert any privilege against self-incrimination, as the constitutional privilege is a personal one, applicable only to natural individuals. United States v. White, 322 U.S. 694, 64 S.Ct. 1248 (1944). “Since the privilege is a purely personal one, it cannot be utilized by or on behalf of any organization, such as a corporation.” Id., at 698/ 1251 *citing* Hale v. Henkel, 201 U.S. 43, 26 S.Ct. 370, 50 L.Ed. 652 (1906). Where Derco, LLC has no right to assert the privilege against self-incrimination, it therefore has no standing to properly be included with co-defendants Jeffrey Derderian and Michael Derderian on their motion. Consequently, irrespective of how this Honorable Court rules on the motion for a stay of civil proceedings as regards co-defendants Jeffrey Derderian and Michael Derderian personally, plaintiffs pray the motion to stay as it concerns defendant Derco, LLC d/b/a The Station be denied.

V. CONCLUSION

Given the absence of any constitutional prohibition against denying the requested stay of the civil proceedings, where co-defendants Jeffrey Derderian and Michael Derderian face indictment in a parallel state court criminal prosecution, this Honorable Court must engage in a balancing of the circumstances and interests involved in this

⁶ See Motion To Stay filed herein as follows: “Now come the defendants, Jeffrey Derderian, Michael Derderian, and Derco[LLC], d/b/a The Station, and move this Honorable Court for a stay of the instant action against them, including the filing of an answer to the plaintiffs’ complaint.” (emphasis added).

case through a fact specific inquiry. Whereas co-defendants Jeffrey Derderian and Michael Derderian are central figures in this matter, and where there is great potential for prejudice to the plaintiffs by delaying discovery in the civil litigation, a broad stay is not indicated.

The fact that the defendants seemingly ask for a stay merely until January 31, 2005, is somewhat misleading. It is quite clear that the criminal proceedings will not be concluded by that date, and plaintiffs anticipate co-defendants will be seeking many extensions of the stay should they succeed in obtaining the initial stay. Furthermore, if the requested stay is granted, plaintiffs would be effectively prevented from conducting meaningful discovery on non-privileged matters to aid them in opposing several pending motions to dismiss filed by other defendants.

Finally, plaintiffs contend that defendant Derco, LLC d/b/a The Station as a duly existing Rhode Island limited liability company does not have standing to join in the motion for a stay. The Fifth Amendment right against self-incrimination extends only to natural persons and is not available to Derco, LLC.


For the reasons stated herein, plaintiffs pray this Honorable Court will deny the co-defendants' motion for a stay and that a modest time shall be granted for the defendants to provide a timely answer to plaintiffs' complaint.

Respectfully submitted
By Their Attorneys,

Plaintiffs #13(d) and (e); #17 through #63, inclusive; #133 through #190,
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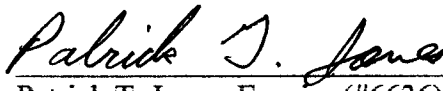
 / SAM
#4155

Mark S. Mandell, Esquire (#0502)
Mandell, Schwartz & Boisclair
One Park Row
Providence, RI. 02903
(401) 273-8330

 / SAM
#4155


Max Wistow, Esquire (#0330)
Wistow & Baryllick Incorporated
61 Weybosset Street
Providence, RI. 02903
(401) 831-2700

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 / SAM
#4155

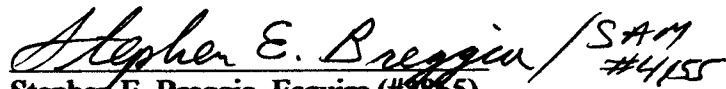
Patrick T. Jones, Esquire (#6636)
Cooley Manion Jones LLP
21 Custom House Street
Boston, MA. 02110
(617) 737-3100

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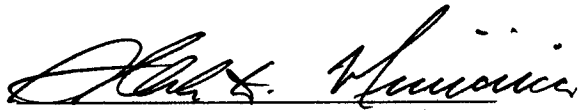
 / SAM
#4155

Michael A. St. Pierre, Esquire (#2553)
Revens, Revens & St. Pierre
946 Centerville Road
Warwick, RI. 02886
(401) 822-2900


Plaintiffs #64; #65(a); #66 through #68, inclusive; and #192 through #195, inclusive;


Stephen E. Breggia, Esquire (#2865) SAM #4/155
Breggia, Bowen & Grande
395 Smith Street
Providence, RI. 02908
(401) 831-1900

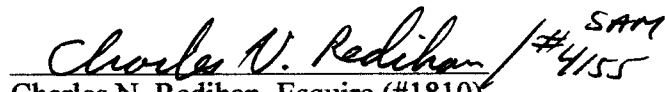
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Steven A. Minicucci, Esquire (#4155)
Calvino Law Associates
373 Elmwood Avenue
Providence, RI. 02903
(401) 785-9400

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Eva Marie Mancuso, Esquire (#3564) SAM #4/155
Hamel, Waxler, Allen & Collins
387 Atwells Avenue
Providence, RI. 02909
(401) 455-3800

Plaintiff #191;


Charles N. Redihan, Esquire (#1810) SAM #4/155
Kiernan, Plunkett & Redihan
91 Friendship Street,
Providence, RI. 02903
(401) 831-2900

CERTIFICATION

I hereby certify that an exact copy of the within document was mailed to the following individuals on this 8th day of October, 2004.

Thomas C. Angelone, Esquire
Hodosh, Spinella & Angelone, P.C.
One Turks Head Place, Suite 1050
Providence, RI 02903

C. Russell Bengtson, Esquire
Carroll, Kelly & Murphy
One Turks Head Place, Suite 400
Providence, RI 02903

Stephen E. Breggia, Esquire
Breggia, Bowen & Grande
395 Smith Street
Providence, RI 02908

Joseph B. Burns, Esquire
Rome McGuigan Sabanosh, P.C.
One State Street
Hartford, CT 06103

Joseph V. Cavanagh, Jr., Esquire
Kristine E. Rodgers, Esquire
Blish & Cavanagh, LLP
30 Exchange Terrance
Providence, RI 02903

Edward M. Crane, Esquire
Deborah Solmor, Esquire
Law Offices of Brian Cunha & Associates
904 Broadway
East Providence, RI 02914

Brian Cunha, Esquire
Brian Cunha & Associates
904 Broadway
East Providence, RI 02903

Michael R. DeLuca, Esquire
Gidley, Sarli & Marusak, LLP
One Turks Head Place, Suite 900
Providence, RI 02903

Anthony F. DeMarco, Esquire
Christopher C. Fallon, Esquire
Reynolds, DeMarco & Boland, LTD
170 Westminster Street, Suite 200
Providence, RI 02903

Gerald C. DeMaria, Esquire
James A. Ruggieri, Esquire
Higgins, Cavanagh & Cooney
The Hay Building
123 Dyer Street
Providence, RI 02903

Marc DeSisto, Esquire
DeSisto Law
211 Angell Street
PO Box 2563
Providence, RI 02906-2563

Curtis R. Diedrich, Esquire
Sloane & Walsh, LLP
127 Dorrance Street
Providence, RI 02903

Stephanie DiMaio-Larivee, Esquire
Grilli & DiMaio
215 Broadway
Providence, RI 02903

Mark Dolan, Esq.
Rice, Dolan & Kershaw
170 Westminster Street
Providence, RI. 02903

Gerald P. Dwyer, Jr., Esq.
Robinson & Cole
280 Trumbull-Street
Hartford, CT. 06103

Christopher C. Fallon, Jr., Esquire
Cozen O'Connor
1900 Market Street
Philadelphia, PA 19103-3508

Donald M. Gregory, Esquire
7630 Post Road
North Kingstown, RI 02852

Mark Hadden, Esquire
68 Kennedy Plaza, Suite 3
Providence, RI 02903

Carl A. Henlein, Esquire
John R. Crockett, III, Esquire
Susan S. Wettle, Esquire
Frost Brown Todd
400 West Market Street, 32nd Floor
Louisville, KY 40202-3363

Edward T. Hinchey, Esquire
Sloane & Walsh, LLP
Three Center Plaza
Boston, MA 02108

Howard Julian
570 Shermantown Road
Saunderstown, RI. 02874

Daniel J. Horgan, Esquire
The Horgan Law Offices
111 Huntington Street
New London, CT 06320

Patrick T. Jones, Esquire
Cooley Manion Jones, LLP
21 Custom House Street
Boston, MA 02110

Bruce P. Keller, Esquire
Jessica L. Margolis, Esquire
Debevoise & Plimpton
919 Third Avenue
New York, NY 10022

Fred A. Kelly, Jr., Esquire
Randall L. Souza, Esq.
Jessica L. Margolis, Esquire
Nixon Peabody, LLP
One Citizens Plaza, Suite 700
Providence, RI 02903

Joseph Krowski, Esquire
30 Cottage Street
Brockton, MA 02310

Donna M. Lamontagne, Esquire
Zizik, Powers, O'Connell, Spaulding, Lamontagne, P.C.
40 Westminster Street, Suite 201
Providence, RI 02903

Ronald Langlois, Esquire
Lauren Wilkins, Esquire
Smith & Brink, P.C.
One State Street, Suite 400
Providence, RI 02908

Faith A. LaSalle, Esquire
Law Offices of Faith A. LaSalle
One Turks Head Place, Suite 1010
Providence, RI 02903

James R. Lee, Esquire
Department of Attorney General
150 South Main Street
Providence, RI 02903

Thomas W. Lyons, Esquire
Strauss, Factor, Laing & Lyons
222 Richmond Street, Suite 208
Providence, RI 02903-2914

Richard W. MacAdams, Esquire
MacAdams & Wieck Incorporated
10 Dyer Street, Suite 400
Providence, RI 02903

John R. Mahoney, Esquire
Asquith & Mahoney LLP
155 South Main Street
Providence, RI 02903

Eva Marie Mancuso, Esquire
Hamel, Waxler, Allen & Collins
387 Atwells Avenue

Providence, RI 02909

Mark Mandell, Esquire
Yvette M. Boisclair, Esquire
Mandell, Schwartz & Boisclair
One Park Row
Providence, RI 02903

W. Thomas McGough, Jr., Esquire
James J. Restivo, Jr., Esquire
Reed Smith LLP
435 Sixth Avenue
Pittsburgh, PA 15219

Edwin F. McPherson, Esquire
McPherson & Kalmansohn LLP
1801 Century Park East, 24th Floor
Los Angeles, CA 90067

Matthew F. Medeiros, Esquire
Little Medeiros Kinder Bulman & Whitney P.C.
72 Pine Street
Providence, RI 02903

Howard A. Merten, Esquire
Eric M. Sommers, Esquire
Vetter & White
20 Washington Place
Providence, RI 02903

Ralph J. Monaco, Esquire
Conway & Londregan, P.C.
38 Huntington Street
PO Box 1351
New London, CT 06320

James T. Murphy, Esquire
Kelly N. Michels, Esquire
Hanson Curran, LLP
146 Westminster Street
Providence, RI 02903

John J. Nazzaro, Esquire
John Nazzaro Law Office
164 Hempstead Street
New London, CT 06320

Mark T. Nugent, Esquire
Morrison Mahoney LLP

121 South Main Street, Suite 600
Providence, RI 02903

Edward B. O'Connell, Jr., Esq.
Waller, Smith & Palmer, P.C.
51 Eugene O'Neil Drive
P.O. Box 88
New London, CT. 06320

J. Renn Olenn, Esquire
Olenn & Penza, LLP
530 Greenwich Avenue
Warwick, RI 02886

Mark K. Ostrowski, Esquire
Shipman & Goodwin, LLP
One Constitution Plaza
Hartford, CT 06103-1919

Carla Ottaviano, Esq.
Law Offices of DuBorg & Farrell
200 Glastonbury Blvd., Ste. 301
Glastonbury, CT. 06033

Robert I. Reardon, Esquire
The Reardon Law Firm
160 Hempstead Street
New London, CT 06320

Charles N. Redihan, Jr., Esquire
Kiernan, Plunkett & Redihan
91 Friendship Street
Providence, RI 02903

James H. Reilly, Esquire
Donald J. Maroney, Esquire
Kelly, Kelleher, Reilly & Simpson
146 Westminster Street, Suite 500
Providence, RI 02903

Ronald J. Resmini, Esquire
Law Offices of Ronald J. Resmini
155 South Main Street, Suite 400
Providence, RI 02903

William P. Robinson, Esquire
Stephen M. Prignano, Esquire
Stephen J. MacGillivray, Esquire
Edwards & Angell, LLP
One Financial Plaza, Suite 2700

Providence, RI 02903

Michael T. Ryan, Esq.
Ryan, Ryan, Johnson & Deluca
80 Fourth Street
P.O. Box 3057
Stamford, CT. 06905

Michael A. St. Pierre, Esquire
Revens, Revens & St. Pierre, P.C.
946 Centerville Road
Warwick, RI 02886

Allan B. Taylor, Esq.
Day, Berry & Howard
185 Asylum Street
City Place I
Hartford, CT. 06103

Mark D. Tourgee, Esquire
Timothy A. Williamson, Esquire
Inman & Tourgee
1193 Tiogue Avenue
Coventry, RI 02916

Andrew J. Travelise, Esquire
Reed Smith LLP
2500 One Liberty Place
Philadelphia, PA 19103-7301

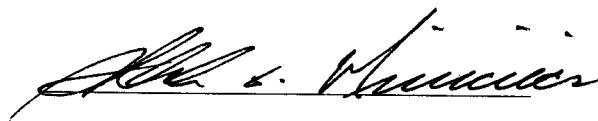
Scott J. Tucker, Esquire
Tucker, Heifetz & Saltzman, LLP
Three School Street
Boston, MA 02108

Earl H. Walker, Esquire
Charles Babcock, Esquire
Nancy W. Hamilton, Esquire
Jackson Walker LLP
1401 McKinney, Suite 1900
Houston, TX 77010

Max Wistow, Esquire
Wistow & Barylick
61 Weybosset Street
Providence, RI 02903

David B. Zabel, Esq.

Cohen & Wolf, P.C.
1115 Broad Street
P.O. Box 1821
Bridgeport, CT. 06103

A handwritten signature in cursive script, appearing to read "A. E. Minicci", written in black ink.